UPREME COURT. U. S.

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JOHN F. DAVIS, CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 1005

EARL E. HOWE,
Petitioner

vs.

GENERAL MOTORS CORPORATION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR REHEARING

Warren C. Horton,
208 S. LaSalle Street,
Chicago, Illinois 60604

Attorney for Petitioner.

William Hettleman,
Of Counsel.

In The

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EARL E. HOWE,
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vs.

GENERAL MOTORS CORPORATION,
Respondent.

PETITION FOR REHEARING

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the U.S.:

Comes now EARL E. HOWE, petitioner for certiorari in the above case, and presents this, his petition for a rehearing of the above case; and, in support thereof, shows respectfully:

1. On Monday, March 24, 1969, this Honorable Court entered an order denying the petition for certiorari.

2. That William Hettleman, counsel in this cause, who had been responsible for the preparation of all documents in this Court to date, became quite ill on March 26, 1969, the date of his receipt of notice from the Clerk of this Court of the denial of the petition for certiorari, as evidenced by the attached certificate by Dr. Wesley H. Gregor, the original of which was filed with the Internal Revenue Department in his application for an extension of time for filing his Income Tax Return for the year 1968.

3. That, as will appear from the affidavits attached hereto by George G. Seibert, David D. Mathis, John Shelley, and William Hettleman, through no fault of petitioner, his Reply to the Respondent's Motion in Opposition to the Petition for Certiorari was delivered to the Clerk of this Court on Thursday, March 20, 1969, and it is believed that either the copies of his said

Reply did not reach the members of this Court, or did not reach them before their decision in sufficient time prior thereto for careful study and digest, to the possible great prejudice of your petitioner:

(a) The affidavit of George Seibert recites that a driver of the Associated Air Freight, Inc., on Tuesday, March 18, 1969, picked up a carton containing 40 copies of the Reply, and that the same was delivered at 10:25 P.M. that evening to the United Airlines for Flight 2786 due to arrive in Washington, D.C. on Wednesday, March 19, 1969 at 8:00 A.M.

(b) The affidavit of David D. Mathis evidences the receipt by United Airlines of said carton on Tuesday, March 18, 1969 at 10:25 P.M. (12:25 Airplane Time).

(c) The affidavit of John Shelley indicates that the consignee of Associated Air Freight, Inc.,Rick's Delivery Service, Alexandria, Virginia, picked up said

carton at the United Airlines on Wednesday, March 19, 1969 at 6:00 P.M., and that said Ricks Delivery Service delivered said carton to the office of the Clerk of this Ccurt about the forenoon of Thursday, March 20, 1969.

(d) The affidavit of William Hettleman indicates that United Airlines made no Manifest of any cargo, such as said carton, and hence had indicated no Flight number, nor the time of the departure from Chicago, carrying said carton, or of its arrival in Washington, D.C., which the United Airlines agent admitted to affiant, Hettleman, was highly unusual and irregular.

(e) The affidavit of George Seibert indicates that because of alleged untimely delivery of the Reply these documents may not have been presented to the members of this Court.

(f) Attached to the affidavit of William

Hettleman is the original letter received by him from the Clerk of this Court, signed E. P. Culliman, Chief Deputy, and dated March 10, 1969, which would seem to indicate that the Reply, delivered on or before March 22, 1969, would be timely.

4. Justice requires, in a full consideration of this case, that said Reply be read and studied carefully by this Court because it refutes the Brief in Opposition and shows that there is no valid objection to the grant of the petition for certiorari.

WHEREFORE, it is prayed respectfully that this case be re-opened for further study and consideration by this Court.

Respectfully submitted,

Warren C. Horton

WARREN C. HORTON
208 So. LaSalle Street
Chicago, Illinois 60604
Attorney for Petitioner.

Pursuant to Rule 58, I hereby certify that the foregoing is presented in good faith, not for delay, and is restricted to the grounds specified in par. 2 thereof.

Warren C. Horton

WARREN C. HORTON

9669-71 Allen Avenue
Rosemont, Illinois 60018

STATE OF ILLINOIS)
COUNTY OF COOK) SS.

GEORGE E. SEIBERT, FIRST BEING DULY SWORN, DEPOSES AND SAYS:

1. I AM THE DISPATCHER OF ASSOCIATED AIR FREIGHT LOCATED AT THE ABOVE ADDRESS.

2. ON TUESDAY, MARCH 18, 1969 ONE OF OUR DRIVERS, GEORGE RENTZEL, PICKED UP FROM THE WHITEHALL COMPANY, 320 WEST ADAMS STREET, CHICAGO, ILL. A CARTON CONTAINING FORTY COPIES OF A REPLY, IN ACCORDANCE WITH OUR UNIFORM AIR-BILL, A PHOTO COPY OF WHICH IS ATTACHED HERETO.

3. FROM MY TELEPHONE CONVERSATION WITH THE UNITED AIRLINES, TO WHICH SAID CARTON WAS DELIVERED ON THAT SAID TUESDAY, MARCH 18, AT 10:25 P.M., I WAS ADVISED THAT SAID CARTON WAS ABOARD FLIGHT NO 2786 WHICH LEFT O'HARE AIRPORT, NEARBY CHICAGO, AT 5:00 A.M. WEDNESDAY, MARCH 19TH, AND ARRIVED IN WASHINGTON D. C. AT 8:00 A.M. THE SAME DAY.

4. IN CHECKING INTO THE DELIVERY, OF SAID CARTON IT WAS INTIMATED TO BE UNTIMELY AND MIGHT JUST AS WELL BE DUMPED INTO THE POTOMAC RIVER.

SUBSCRIBED AND SWORN TO ME THIS 15TH DAY OF APRIL 1969.

George E Seibert

GEORGE E SEIBERT
DISPATCHER

H. Stanley Reid

NOTARY PUBLIC

CHIC.

ASSOCIATED AIR FREIGHT INC.
9669-71 ALLEN AVENUE, ROSEMONT, ILLINOIS 60018

STATE OF ILLINOIS } SS.
COUNTY OF COOK

DAVID D MATHIS, FIRST BEING DULEY SWORN, DEPOSES AND SAYS,

1. I AM THE DISTRICT MANAGER OF ASSOCIATED AIR FREIGHT, LOCATED AT THE ABOVE ADDRESS, AND I AM IN CHARGE OF ALL THE RECORDS AT THIS PLACE.

2. ATTACHED HERETO IS A UNITED AIRLINES AIRWAYBILL NUMBER 16 ORD 3016440 C, SIGNED BY ITS AGENT , MR HUGHES, ON MARCH 18, 1969 AT 10:25 PM, EVEDENCING ITS RECEIPT FROM US OF 1 CTN BOOKS, WEIGHING 6 POUNDS, BEING 40 COPIES CONTAINED IN SAID CTN, ADDRESSED TO THE CLERK, SUPREME COURT OF THE UNITED STATES, WASHINGTON D. C. AND CONSIGNED BY US c/o RICKS DELIVERY SERVICE 6 W ALEXANDRIA AVE, ALEXANDRIA VIRGINA.

SUBSCRIBED AND SWORN TO, BEFORE ME THIS 14TH DAY OF APRIL 1969.

DAVID D MATHIS
DISTRICT MANAGER

NOTARY PUBLIC

Associated Air Freight, Inc.
(ATTACHED TO THE G. E. SEIBERT AFFIDAVIT)

MAIN OFFICE:
167-16 146th AVENUE, JAMAICA, N.Y. 11434

UNITED AIRBILL
NON-NEGOTIABLE

AIRBILL NUMBER
020 - 48873

AIRLINE 16-3016440-C

FROM (CONSIGNOR) White Hall Pr. Inc.

CONSIGNOR'S STREET ADDRESS 320 W Cedar

CITY Chicago ZONE 60610 STATE Ill

BY C. Howe

X DECLARED VALUE $ NVD #10

CONSIGNOR'S NO.

DESTINATION AIRPORT (CITY) DCA

CONSIGNEE'S NO.

TO (CONSIGNEE) Clerk Supreme Court of U.S.

CONSIGNEE'S STREET ADDRESS 1 Supreme Court Plaza

CITY Washington D. C. ZONE STATE

CHARGES ☒ PREPAID ☐ COLLECT

NO. OF PIECES	DESCRIPTION OF PIECES AND CONTENTS	WEIGHT	SCALE	RATE	PREPAID CHARGES	COLLECT CHARGES
1	Box Books	6 lbs	7		900	

(ATTACHED TO D. D. MATHIS AFFIDAVIT)

☐ DISTRIBUTION ☒ ASSEMBLY ☐

SHIPPER'S MANIFEST

UNITED AIR LINES

SHIPPER NAME: PSSOCIATED AIR FRT	MASTER AIRBILL NUMBER: 16-ORD-301644 C — PART: C
INSTRUCTIONS TO CARRIER	CONSIGNEE NAME: PSSOCIATED AIR FRT c/o PICKS DLVY. SVC.
	STREET ADDRESS: 6 W. ALEXANDRIA AVE. (1)
	CITY: ALEXANDRIA — STATE: VIRGINIA — ZIP CODE: DCA
DECLARED VALUE: $	DIMENSIONAL WEIGHT
	TOTAL CUBIC INCHES: (202) 836 6363

PIECES	DESCRIPTION (INCLUDE METHOD OF PACKING, MARKS AND NUMBERS)	WEIGHT
1 Pcs	Books	6
TOTAL		TOTAL 22.5

THE ABOVE IS RECEIVED IN APPARENT GOOD CONDITION EXCEPT AS NOTED. BY SIGNATURE: Hough DATE: 1/1 TIME

1 - SHIPPER

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 1005

EARL E. HOWE,
Petitioner,
vs.
GENERAL MOTORS CORPORATION,
Respondent.

AFFIDAVIT OF WILLIAM HETTLEMAN

STATE OF ILLINOIS)
COUNTY OF COOK) SS.

WILLIAM HETTLEMAN, being first duly sworn, deposes and says:

1. That he is of counsel in the above-entitled cause and has been responsible for preparing the documents therein to date;

2. That he had been too ill to proceed further until a few days ago, as evidenced by the attached photocopy of a certificate of Dr. Gregor filed with his application for extension of time to file his 1968 Federal Income Tax Return.

3. That it came to his attention late Friday of last week that an Assistant Clerk of this Court, upon delivery to him of the carton containing Petitioner's Reply to the Brief in Opposition, about the forenoon of Thursday, March 20, 1969, is supposed to have remarked to the delivery messenger that delivery was late and the carton might as well be dumped into the Potomac River.

4. That it would seem the members of this Court may not have had a chance to study the Reply carefully prior to conference on Friday, March 21, 1969, and the decision handed down on Monday, March 24, 1969 denying the Petition for writ of certiorari.

5. That affiant, in the short time left to prepare print and file a Petition to file Reply, commenced an investigation into what transpired following United Airlines' receipt by Hughes, of the carton on Tuesday, March 18, 1969 at 10:25 p.m.

a. A Mrs. Allen of United Airlines at its Chicago office (phone 686-3581) could supply no information as to Air Bill No. 16 Ord. 301 6440C, other than that said carton was unmanifested and had no flight number assigned to it so that she was unable to state when said carton left Chicago or arrived in Washington, D.C., which she admitted to affiant, was quite an unusual and irregular procedure.

b. Mrs. Allen early this morning finally advised affiant that her inquiries for information from the United Airlines office in Washington, D.C. remained unanswered for several days and suggested affiant phone that office directly at 202-783-8095.

c. Affiant promptly dialed said number and spoke to a Mr. Andrews who, upon examination of 16 Ord 301 6440C, stated "Ord" meant O'Hare Airfield, near Chicago; and that "C" meant this carton was part of a cargo whose assembly must first be effected upon arrival in Washington before delivery to the consignees. He

verified the carton's receipt at O'Hare on Tuesday, March 18, 1969 at 10:25 p.m. The Flight 2768 indicated a cargo liner; that its scheduled departure from Chicago was at 5:15 a.m., Wednesday, March 19, 1969 and arrival at Baltimore 7:52 a.m. the same day; that the carton then travelled by surface truck thence to Washington where it must have arrived about 1:30 p.m. the same day; and that a phone call was made by a person unknown, of United Airlines, at 2:45 p.m. the same day to Rick's Delivery Service, Alexandria, Virginia; and that one E. Ricks signed for and picked up said carton at 6 p.m. the same day.

William Hettleman

SUBSCRIBED and SWORN to before me this 16th day of April, 1969.

Marie B. Lemmer
Notary Public

(ATTACHED TO HETTLEMAN AFFIDAVIT)

ROY G. NAGLE, M. D.
WESLEY H. GREGOR, M. D.
700 N. MICHIGAN AVE.
CHICAGO, ILLINOIS 60611

TELEPHONE WH 4-4552

April 9, 1969

Re: Mr. William Hettleman

To Whom It May Concern:

Mr. Hettleman was seen by me on April 7, 1969 for a complete history and physical. He has had a problem with a recent bronchitis which has led to disability over the past month. His inconvenience and trouble with the malady, I would think is sufficient grounds for the extension requested.

W. H. Gregor

Wesley H. Gregor, M.D.

(ATTACHED TO HETTLEMAN AFFIDAVIT)

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

March 10, 1969

AIRMAIL

William Hettleman, Esq.
1350 Astor Street
Chicago, Illinois 60610

Re: Howe v. General Motors Corp.
No. 1005, October Term, 1968

Dear Mr. Hettleman:

Replying to your letter of the 3rd, you are advised that your reply brief will be regarded as timely any time next week, in the above-entitled case.

Very truly yours,

JOHN F. DAVIS, Clerk

By

E. P. Cullinan
Chief Deputy

EPC:bs